

U. S. DEPARTMENT OF HEALTH and HUMAN SERVICES

SOCIAL SECURITY ADMINISTRATION

DISABILITY SYMPOSIUM

The Disability Program

Its Origins - Our Heritage - Its Future - Our Challenge

Thursday, January 21, 1993, 8:30 a.m.

Sheraton Savannah Inn

Savannah, Georgia

D.B.L. & ASSOCIATES

Post Office Box 1285

Savannah, Georgia 31402 .

(912) 234-2292

GORDON M. SHERMAN (SSA Regional Commissioner, Atlanta): Good morning, ladies and gentlemen, on the first day of the Clinton administration. We are glad to have you here. Both Noel Wall (Regional Commissioner, Dallas) and I welcome all of you from the Atlanta and Dallas Regions to this historic session.

The topic today is the disability program. All of us here are heavily involved in that in serving the American citizens with protection against disability. Our theme is:

The Disability Program,
Its Origins, Our Heritage!
Its Future, Our Challenge!

I want to read three lines to you from Maya Angelou's inaugural poem, yesterday, which I think is quite appropriate. If you haven't read her poem it's in USA Today. It's really a fine poem, and I quote these lines which apply to our session.

History, despite it's retching pain,
Can not be unlived.
And if faced with courage,
Need not be lived again.

If we look at that as our theme for our session today as we move into it, I think it would be very apropos. It is our great pleasure to have our former Deputy Commissioner and Acting Commissioner, Arthur Hess, with us to share his experiences over the years in the disability program. Art was our first Director of the Bureau of Disability Insurance, which was established in the 50s.

MR. HESS: Thank you very much. It's a real pleasure to be here. I seem to , gravitate toward the South when important things are happening. As we came across from South Carolina into Georgia yesterday, the memories came back. At the beginning of the 50's when the disability program was being constructed and put into place, one of the first regional managers meetings that I attended was the Atlanta Region at Jekyll Island near here.

Unique Federal and State Structure

And when we began to work with the state vocational rehabilitation directors, it was with the fledgling organization of the very, very small Federal-State rehabilitation effort that was under way in the 30's and 40's, and that was to become involved as a partner in the disability legislation. We had our first meetings with the officials of the National Council of Rehabilitation Administrators here, in this region, because the states in this region were in

the lead as far production and services were concerned.

I intend to take you back a little bit farther into New Deal history and even pre-New Deal history of disability. First, however, I welcome and commend the presence here this morning of the State Supervisors of disability operations in the respective states of the Atlanta and Dallas regions. I might mention, too, that when we finally did get the first operative disability freeze program in 1954, it involved the monumental compromise of bringing the state agencies into the Social Security picture. This was an absolutely unprecedented piece of legislation from the standpoint of federal/state relations.

True, there had been grants-in-aid under various programs. There were all kinds of federal and state involvements wherein federal money was matched with state money. But I'm not now talking about rehabilitation. I'm talking about the core operation of determining disability. This was the first Federal program in which 100 percent federal money-- including the salaries and operating expenses of the state agencies-- was advanced to the States and carried out under agreement in an all-Federal benefit operation. And it is still that way today.

I don't know that I would want to say today that there are no other programs with that characteristic. But at that time, it was 100 percent federal money, a federal statute and a few lines of legislation that said, "The Secretary shall...". All Social Security legislation is in terms of "the Secretary shall", because that is where the fundamental legal authority rests. But the Secretary pushes it down to the Commissioner of Social Security, and in those days the Commissioner of Social Security pushed it down to me and the fledgling disability organization. "The Secretary shall enter into agreements with the states to have determinations of disability made." That's about as much as was in the law.

Now, there was a lot of Federal legislation on the books regarding general contracts and contract negotiations and terminations and many other things for federal contracting authorities with private agencies; all the things that came out of World War II in the way of fiscal contract requirements. But disability didn't come under standard contracting authority, and we didn't even have to negotiate those agreements with the governors. In a few places the governors got into the picture. But here we sat, a group of Social Security mid-level executives and a group of State's Council of Vocational Rehabilitation Administrators with just the bare law, and we had to work out this arrangement.

You all who have to work with this-- and even more so the people from outside who look at it today, like Virginia Reno's group at the National

Academy of Social Insurance which has received a directive from the Ways and Means Committee similar to this-- might say: "Well, we don't know for sure how it got this way, but this sure doesn't look like the way you would set it up if you were starting over again. "

And that question has come up from time to time and will come up again in the future of this symbiotic relationship that has been established and that as both Gordon and Noel have said in earlier remarks is working so well despite the unusual structure that was created.

History Before the New Deal

I would like to pick up on the theme of history and heritage, because I think it is important to appreciate how we got to this dual administration. But it's even more important to find out how we came to a permanent and total disability program under Social Security and how has it evolved in the years past.

I hope I don't get to sound too professorial -- but just to get it in perspective-- disability in social and economic terms and in terms of governmental activity, goes back to Bismarck's times in Germany, when the first European social insurance system was put into effect. The design of that was to couple disability payments-- health insurance and medical care.

The German programs started with weekly benefits for health payments and for people who were out of work, some temporary cash sickness payments, and for people who stayed out of work for a long, long time some permanent medical or rehabilitative and other benefits including some cash benefits.

That was the European model which spread all over Europe except in Great Britain where they later established national health insurance quite separate and apart from the concept of payments for retirement and invalidity. I say that only because it is going to be instructive as to what happened here during the New Deal days, and why disability became associated with the retirement programs rather than with the repeated aborted efforts to set up national health insurance in the '30's and '40's in this country.

In our country, disability as a concept, especially permanent and total disability, developed during the pre- World War I days and subsequently in many fragmented and pinpointed ways. There were workers' compensation programs developing in the states that had both "permanent and total" and "permanent partial", as well as temporary disability payments.

During World War I, we had war risk insurance which, at the end of the war,

could be converted to U.S. government life insurance. This had a “waiver of premium” provision connected with it. Now, waiver of premium was already something private insurance companies had been selling before and after World War I. And what is waiver of premium? Well, for a little additional cost on your life insurance policy you would have a provision that said that if you became permanently and totally unable to engage in work, your life insurance premium would be waived. In other words you wouldn’t lose the benefits of your life insurance. You would be excused from paying the insurance premium because of permanent and total disability.

Some of these cases started getting court challenges and court interpretation, so even before the 1930’s the U.S. courts had an early introduction to the question of what is permanent and total disability.

Also, the insurance companies got more ambitious and they actually started to write some professional disability income insurance. In other words, they started to write insurance in cases that were not just life insurance premium-waiver, but actually cash benefits in case you became professionally unable to do your customary work or unable to do any work.

Those two concepts-- the occupational concept of disability for your usual job and the permanent and total concept for inability to do any gainful work-- were already known and sometimes legally challenged even before the Great Depression. They became embedded in a whole series of federal programs that came along like the programs in the ’20’s for longshoremen and seamen and the program for federal civil-service workers. And then the states picked up state pensions for governmental employees and the federal government picked up civil service pensions. And you had policemen’s and firemen’s pensions.

After World War I veterans’ benefits and compensation entered the field of disability. Compensation was service connected and the other veterans’ benefits were non-service connected. Compensation for service connected disabilities could be for total or partial disabilities. It was compensation for the fact that a veteran had been injured in service or become sick in service. He got a benefit, total or partial.

Veterans benefits for those whose injuries or illness were not service connected were for total disability only and were accompanied by a means test that was fairly liberal. All of these disability benefit concepts were in place before the New Deal.

The New Deal

So, when the New Deal started, when FDR came in, his Committee on Economic Security had the assignment in the depths of this terrible, terrible depression of seeing what were the needs of the millions and millions of people who had lost their jobs. The Committee looked at the whole scope of social insurance, including national health insurance and invalidity and old age pensions, and gave President Roosevelt options as to where to start. The options that were chosen were first of all immediate welfare benefits and the establishment of grant-in-aid programs for those already' old or already unemployed and work-fare programs like the Works Progress Administration and the Civilian Conservation Corps. For the long haul, a social security, old age benefit insurance for workers in commerce and industry was started.

For the first 20 or so years, during World War II and on up until the 1950's, the self-employed-- professional self-employed or farm self-em-ployed, domestic workers, et cetera-- weren't covered. Social Security was originally a program of old age insurance to pay people at or after age 65 who were no longer working. It was first enacted in 1935 to become effective in 1937. And in 1939 it was extended to cover benefits for certain dependents-- wives, children and survivors of the insured worker.

Thus, Social Security was built on a pension insurance framework which was predicated on people working and paying in-- working steadily for quite a while and becoming entitled to benefits when they became 65; or if the person died before retirement, their survivors would become eligible. A substantial attachment to the labor market lay behind the concept of social insurance.

It was then that a problem began to emerge that the insurance companies had recognized when they invented "waiver of premium". The problem was that people were working under Social Security with the expectation that they were going to have benefits when they reached 65 or that their survivors would get benefits if they died before then. People were also becoming unemployed because of inability to continue in work. And low and behold, their insured status could run out, because insured status was always stated in terms of either a certain proportion of the elapsed time being in covered work or, finally, permanent insured status if you worked as long as ten years.

FDR's priorities that were set in 1935 did not immediately address either health insurance or disability insurance. For one, all the studies were clear that these were going to be difficult and potentially costly types of coverage to enact on a national basis. The insurance companies had disastrous experience with their own private insurance policies during the Great Depression, which signaled to actuaries and others that there existed a strong relationship between

the condition of the labor market and claims for disability benefits.

Also, experience with workers' compensation and the U.S. government life insurance had signaled that it would be very hard to decide what is "permanent and total disability". Even if you spelled it out and said "for any substantial gainful activity", it was going to be pretty hard to say where you drew the line. Earlier legislation showed that when you tried to make a distinction between permanent and total disability "for any work", which was the thing that people really wanted to insure-- and inability to do one's "customary work", which was what many of the pension plans for public employees and railroad employees provided-- those were going to be terribly difficult lines to draw and hold.

The 1940s

And so all during the '40s the emphasis in planning and in congressional attention to further developments in social insurance was really based on health insurance, putting national health insurance in place. In addition, there were a whole series of bills starting at the end of the Roosevelt administration, through the Truman administration and on up until about 1948 or 1950 which focused on improvements in the OASI security coverage that was still narrow and on benefit amounts that were badly lagging. There had been no increase in coverage or in benefits during the World War II period at all. And it became clear that this program was good enough that, to be fair to the American people, you had to give other people besides those working in commerce and industry a chance to be under it.

So, focus was on the things that Alvin David can tell you more about, which were the actual updating and improvements of the OASI program itself. And then the addition of health insurance seemed to be the next clear priority; but when you said health insurance, this set off alarms as far as the medical profession and the insurance profession were concerned. Disability insurance, was also a red flag.

It was not until 1948 that a Senate Finance Committee Advisory Council, of which Bob Ball was the staff director, actually recommended disability benefits for permanent and total disability, with *very* strict insured status requirements, with a very strict definition, with all kinds of safeguards hedged about it-- i.e., a six months waiting period, reviews for medical improvement, referral for rehabilitation services, etc. And even so, a few members of that advisory council, which included some very prominent insurance people, issued a dissent.

So the framework, not the administrative framework, but the programmatic

framework, for a very limited disability benefit program for presumably everybody covered by Social Security, was first conceived and drafted in that kind of a climate.

Legislation in the 1950s

The ball was then thrown to the Congress because there was a bill in 1950 which passed the House-- including provision for disability benefits-- but passed the Senate with disability out of the picture completely. And disability insurance was dropped out in conference, but Aid to the Permanently and Totally Disabled (APTD), the States' grant-in-aid program for the disabled, was established. The first big postwar legislative expansion of the Social Security program focused, therefore, almost exclusively on improvements of coverage and benefits. Both health insurance and disability insurance fell by the wayside. That was toward the end of the Truman administration.

Incidentally, it's very interesting that a lot of the leadership in the Ways and Means Committee came from these two regions. Chairman "Muley" Doughton was from North Carolina. It was his last session in 1952 that I'm going to tell you about. He was followed by Jerry Cooper from Tennessee, later Wilbur Mills from Arkansas. And God bless Wilbur Mills.- I hope he has been forgiven for his later transgressions which, quite ironically, arose out of one of the things that we are concerned with in disability. That is -- alcoholism and substance abuse. But for his working lifetime he was a power and he was strength. And he insisted on the financial solvency of any Social Security provisions that were ever introduced and considered.

There were no Ways and Means subcommittees and there weren't dozens and dozens of staff. Wilbur Mills was Chairman of "the main committee" and there was a little bit of staff and they held the reins. Alvin David and his people worked directly with the staff of the Ways and Means Committee.

Of course, Social Security legislation originated in the Ways and Means Committee because that's the taxing committee and the committee that constitutionally received jurisdiction over the Social Security program. The Senate came next, and whatever came out of the Senate would go to conference. That would be where they would settle the final provision.

So, we are down to the 1951-52 Congress in the Truman administration, and a bill came out from the House with the disability freeze in it. Maybe it had disability insurance and the disability --

MR. DAVID: The first one did in 1950. That was one that had disability benefits. And then after that ran into a big storm, the next one came with a

freeze only.

MR. HESS: I do want to say, having mentioned the leadership coming from these two regions in the Ways and Means Committee, that the South was also well represented in disability history in the Senate. Aside from Senator Albert Gore, Senior, who spoke up in support of the disability program, the key person was Walter George of Georgia. He saved the day. And Alvin will give you that story.

I just want to tell you about the first abortive legislation in 1952. I want to tell you that because it unexpectedly brought us into the problem area of working with the states on how we were going to administer this program.

This was Doughton's last term as Chairman of the Ways and Means Committee-- he was dropping out. And he was determined he was going to have disability in the bill. The Senate Finance Committee was determined it wasn't going to be in the bill.

In conference there was a deadlock. I think it was the beginning of July and they were going to adjourn. At that point they began looking for further compromises. And somebody said the principal problem is the fear the doctors had of Social Security; this is the entering wedge for health insurance and socialized medicine. So, let's give the determination to state agencies. After all, the states have rehabilitation and they have worker's compensation and they have welfare.

The conferees from the Senate side, however, were still not satisfied that putting the states in the picture would take them off the hook. The insurance industry insisted that disability insurance was a disastrous road, and violent notices kept coming in from their family doctors at home, saying "Don't you go this way or else."

So to get the big bill out, the Conferees put the freeze in with an effective date of July 1st, 1953. And then down at the end they said this provision shall terminate June 30th, 1953. So, the freeze provision terminated the day before it was to go into effect.

That was going to be about 11 or 12 months from the date of enactment. And here were Rob Ball and Alvin and others who had been involved in this drafting, and I said, "What's the point of all this?"

They said, "Well, you know we are getting a new Congress next year. And if the new Congress wants to put the freeze into effect all they have to do is delete that one sentence that says it's to expire and then it will truly be in

effect. "

I said, "Well, what do we do?" So, we set up a small "shadow staff" of planners for the administration of this now-you-see-it, now-you-don't freeze. And we began to consult with the state rehab. people and we, began to draft administrative provisions and see what we could do so as not to get caught short.

It became clear, however, after the new Congress came, that they had a lot of other things on their minds and the freeze was not going to be resurrected.

And so our planning staff (which consisted just of personnel we drew together from the field and from other places on detail) was disbanded. Incidentally, this technique of shadow planning was the same one we had to use when the disability programs actual]] came in a few years later. It seems you never get additional necessary staff ahead of time, when legislation hasn't yet been passed. And even after legislation has been passed, you don't get the appropriation and the staff you need until you are way into administering the new provisions.

The next couple of years involved some interesting jockeying, and I think rather than talking about the provisions, I would like for you to have a little bit of a feel for the political climate.

Disability has always been very politicized. Alvin was much closer to that than I was because he had to sit with the Ways and Means Committee everyday for years and represent SSA across the board for all potential amendments. I would get in there less frequently, especially when disability was being drafted or when things got hot and we had to say, "Well, what are we going to do now?"

Can you give us a little bit of a feel for the climate around in 1950 and '52?

MR. DAVID: Yes, it was as you say politicized. It wasn't so hard for us during the Truman administration to work with the staff of the Ways and Means and Finance Committees because the administration was in favor of the program. It was their program. But when the Eisenhower administration came in, they were opposed to any disability program, the disability freeze or the works.

And at that time the Finance Committee in the Senate and the Ways and Means Committee in the House did not have staff anything like they do today. As a matter of fact, there was the chief counsel of the Ways and Means Committee and one assistant. That was the staff. If it weren't for us from Social Security they would not have been able to operate at all, or in the time

frames Wilbur Mills required.

And one of the things that made our work possible was a little known provision in the Social Security Act of 1935 which was put in there because of the great interest at that time in health insurance. Health insurance had been recommended by the Committee on Economic Security in 1934; it was their report that was the basis for the Social Security Act of '35.' And they wanted to go in with health insurance, but it was quickly recognized by President Roosevelt that there wasn't a chance in the world of getting a Social Security program enacted if health insurance was tied in the same bill. So health insurance references in the original draft Social Security bill of 1934 were dropped.

And as a sop to those who wanted to see health insurance come in, a provision was put into the law which gave the Social Security Board authority to conduct research and do studies of various different ways of providing economic security in addition to those that were written into the Social Security bill. It was that provision that gave the Social Security Board authority to conduct studies and do research; this also enabled us to go ahead during the 30's and 40's with disability planning and working with the staff of the two committees, the Finance and the Ways and Means Committees. Without that authority it could not have been done.

It was easy to do all of this during the Truman administration. But when the Eisenhower administration came in and was opposed to all of this, it was a different story for us. We could still work under the authority of this provision that I mentioned in the original act-- i.e., the authority to do research and conduct studies. We were able to go ahead and work with the Committees, but under considerable difficulty because our bosses were not in favor of what the Committees might do.

And the high point of that for me, personally, was in 1956 when the Committees had asked for a report from the department about the provisions for Social Security benefits. It came to writing a report for the department to the committees giving the department's views and advice, and that job of writing the report got delegated to me by the assistant secretary for legislation.

I did not really know what to do because my heart was in the enactment of the bill, but here I was working for a new administration, working directly with the assistant secretary, who had done me the honor of asking me to personally write this report. I wrote it as best I could.

After it had gone forward, Wilbur Cohen, who had been in charge of legislation for the department and was then the Director of Research and

Statistics, saw this report that I had written, and in the presence of ladies he spoke language that I had never heard from his mouth before and never since. He just raised holy hell, he was that much upset. But there was nothing that could be done, and there was nothing that I could have done in the first place, because I had to write as good a report as I could or else we in SSA would have broken relationships with the assistant Secretary; and such good as we were able to do, which was considerable, would have been discontinued. If I had come up with a report that pulled punches and was not as strong as it could have been... well, it would not have been a good idea. And if I had to do it over again I would still do the same thing.

But the thing that I remember more vividly than anything else was Wilbur Cohen letting go with a string of quite surprisingly unpresentable language about this report.

Well, as I said, it all began with this provision in the earliest social security legislation authorizing studies which, in turn; was fueled by the fact-that there was great interest in health insurance that was passed over in 1935.

Another thing that made a great difference-- and this relates to the political situation that Arthur mentioned-- the thing that made the whole business-of disability insurance, freeze and benefits and all, possible was something you probably won't read about. You can read about what happened in 1950, about the enactment of disability benefits in the House and being thrown out in the Senate without even having hearings on it. You can read about a lot of the things that Arthur and I are talking about. But one thing you won't find in the books is a turning point; if it had gone the other way we might not be here.

In the beginning of 1953, after the Eisenhower administration had come in, there was a lot of talk all over the government about the holdovers. These were the people who had been there during the Truman administration, civil service employees. They were not trusted. Their hearts were not in the right place. All over the government-- this was not only health and Social Security-- but all over the government there was distrust and suspicion about these people who were holdovers.

Then in the spring of 1953 in the early days of the Eisenhower administration the heads of the different units in the Federal Security Agency were called in by the Secretary designee, Mrs. Hobby, and asked about their programs. Mrs. Hobby and her deputy, Nelson Rockefeller, met with Bob Ball, then Acting Director of the Bureau of Old Age and Survivors Insurance. He made a presentation in which he explained to Mrs. Hobby and Nelson Rockefeller what social insurance was. And it was something they didn't know much

about, really. He explained it in a way that nobody else in the world could have. He was and he still is the authority on Social Security. In addition he was one of the world's great authorities on how to explain something that is rather difficult on the face of it.

And the Secretary and her Deputy could easily see that this was a good program. This was something they ought to be for. This was a good conservative Republican program where people helped themselves; they didn't get something in the way of a handout. They paid into the fund, and from the fund, benefits were paid to them when they reached 65, and so forth. It was a good solid conservative program, and the new administration ought to be for it. And he said this in a way -- not like what I'm saying now -- but in his own inimitably convincing persuasive way. And they got it. And that enabled us to go ahead and continue to have a disabilities studies branch in our analysis division, and to continue to do planning and research on what was done under other programs, other governments, worker's compensation and so forth. Without that understanding we would not have been able to get anywhere.

The turning point was in 1956 when the bill containing disability benefits passed the House and had moved on to the Senate Finance Committee. The Finance Committee voted it down 11 to 4. It then went to the floor of the Senate, and there one great, heroic figure, Walter F. George, took it upon himself to introduce and guide through a floor amendment that would add to the bill the provisions for disability benefits. Eleven to four had been against it in the Finance Committee-- which had refused to report it out!

And the opposition was tremendous. It was not only the insurance industry that Arthur mentioned and the strong case that they had made about their disastrous experience in trying to operate disability provisions before, but there was also the American Medical Association, which poured it on. They had every ingenious idea about why this was impossible, it couldn't be done, the costs were going to be astronomical, all out of control. It was not only going to lead to socialized medicine, but one of the Senators said, "This is socialized medicine. We have it right here. The federal government is going to be paying the doctors to do these examinations. The federal government is going to select the doctors and decide what to pay for these examinations. And we are right here in the middle of socialized medicine. Don't let anybody kid you."

So, Walter George stood up after doing a lot of homework and having a lot of help as he went, and he held off this powerful offensive by the lobbyists of the insurance industry and the AMA. And of the two I think that the AMA lobbyists were actually the more effective. They did no't spare the horses. They sent telegrams from home-town physicians to the members of the

committee and to all the Senate telling them why this was a terrible thing to do.

One of the things that I mentioned in passing about the costs getting out of control, it has to be remembered-- which I don't think any of us are inclined to do unless we are reminded of it-- is that in those days the proposed disability benefits program was skinned down, narrowed down, restricted so much in all kinds of ingenious ways, most all of which is still in the law. But it was cut back so far that the cost of this program was one quarter of one percent of payroll for employees, one quarter of one percent for employers. That's what we were dealing with.

That was one of the reasons why the amendment was put in a separate trust fund, the disability trust fund, because of fear these new costs would jeopardize the regular trust fund's benefits for the widows and the orphans and the retired people.

Nobody in the world could have done this except Senator George. He had the ability and the drive and the interest to do it. Nobody else-- even if they had wanted to-- would have been able to match his prestige and the way that he could make these ideas come out and have such an impact.

At the end, after all of his work and contribution, the vote came up. And it was finally passed by one vote, which is to say it passed by 47 to 45. That means that if one vote had changed, it would have been 46 to 46 even-- meaning that the Vice President, Mr. Nixon, who was on hand for such a contingency, would have cast the deciding vote to defeat the bill. So this one vote, this difference of 47 to 45 was the least, the closest it could be and have the bill get through. If one more vote had been lost the bill would have been lost.

Along in there came Senator McCarthy of Wisconsin who had a number of grudges against the Eisenhower administration, including one against the Vice President. McCarthy saw an opportunity to vote with the Democrats, vote for the bill and thereby make it a tie vote in which case the Vice President would have been embarrassed in this election year, 1956, having to cast the deciding vote to kill the disability benefits bill. McCarthy did vote for the amendment -- but then as the record came before him and it became clear that the amendment was going to pass by one vote without him, he quickly turned around and changed his vote. So, it reads now in the record that he voted against the bill, but actually he voted for it the first time in order to embarrass the Vice President.

I wrote down a few things while Arthur was talking. Now, let me see what

else I have.

MR. HESS: Tell them about Lyndon Johnson.

MR. DAVID: Oh, yes, well I said the bill could not have happened without Walter George, that is absolutely true. But it also could have never happened without Lyndon Johnson. He was the Senate majority leader. And he was the one who, along with the majority whip, was in charge of counting the prospective votes. Supporters of the bill thought that they had enough votes to pass it. They thought they had six votes to spare, when Lyndon Johnson motioned to one of the people in the gallery-- as a matter of fact it was to Nelson Cruikshank who was the AFL-CIO liaison, head of their Social Security department-- to come down to the floor. Johnson told him, "You don't have enough votes." And Cruikshank, "Sure, we have them. You've got six votes to spare." And Johnson said, "The hell you do. You need to round up six more votes." And so what Johnson did was to send in word to Senator George to prolong his presentation of the arguments for the bill for one hour during which time the proponents of the bill were to work to regain the votes of those six that they had somehow lost. Which they did to the point where the bill passed by that one vote. But it was Lyndon Johnson who arranged for George to talk that extra hour.

And also -- Lyndon Johnson -- this is not new, this is the way things operated all of the time -- Lyndon Johnson took hold of the poor arm of the majority whip, Senator Clements of Kentucky, who was running for reelection in 1956. And he said, "You have got to vote for this amendment. This is the leadership's position and you can not vote against it." And Senator Clements said, "I gotta vote against. The AMA has come in and they have told everybody that they are going to put everything that they've got into defeating me in November. And I absolutely have to vote against this bill."

And Johnson, with Clement's poor arm twisted like a rag, led him down the aisle holding him by the elbow. In giant six foot steps, he led him down the aisle to change his vote to support the bill. And the end of that story is that, in fact, the AMA did go into Kentucky and put in everything they had and they did defeat Senator Clements in 1956.

One thing that has mystified me from the beginning is how grudging the Congress initially and, as a matter of fact, the people generally, was about the disability insurance program. It was narrowed down and restricted in every ingenious way that you could think of, tightening the eligibility provisions to a what I thought ridiculous extreme: fully insured, currently insured, 20 quarters out of the last 40. There was even one more than that which did get lost along the way. But all the different things-- inability to engage in any substantial

gainful work, long continued and indefinite duration-- all sorts of little provisions to make it tighter and tighter: those were not just done for the purpose of the program. They were done to get the last few votes that were needed to get the bill passed, like that vote in the Senate. Without some of these strange provisions that made it so tight, there would not have been enough votes to pass it. So those were put in not just because some of us who had a hand in planning the program thought that they were a good idea.

Well, I have mentioned all the notes that I made while Arthur was talking and I think I should leave it at that. Don't blame us for all of these screwy provisions..

Including that screwy one about the bill that was to become operative the day after it expired. It was passed to be operative the 1st of July 1953, but to expire the 30th of June the-same year. Anyway, we didn't do all those things. We did what we could, and to me it still seems remarkable that some of us were able to stay there and continue the work on disability legislation under an administration that was opposed to it.

I will leave you with one more story about that. This administration was opposed to Disability all the way along. They fought it every step: including, after 1956, the legislation that took out the age 50 restriction which was in the original law. Congress took that out in 1958, and added disability benefits for the survivors and dependents of the disabled beneficiaries in 1958. Under the Eisenhower administration, all of this was done where we, the staff, were operating with a program that we were in favor of and our bosses were opposed to.

But in the end, after the legislation was passed, we got scads of mail. You seldom get much mail after the benefits are put in, but we got scads of mail from people who addressed the President, Mr. Eisenhower, and thanked him with just pathetic enthusiasm. They thanked him so profusely. They believed that he had done it, he had passed this legislation. Actually, he had opposed it all the way, but he had signed the bills which of course made the difference. And he did sign them, to his credit, and he got all of the praise and accolades for his wonderful work in passing disability legislation.

Thank you.

(NOTE: Recess.)

MR. SHERMAN: We will continue with the second half of our program on the history and experiences through the years. So, we will turn it back to Art.

Program Design

MR. HESS: I want to move now to a few of the specific program provisions that Alvin alluded to that made this program very tight-- but resulted in rapid and continuous amendments over the years. Also, I'll give you a little bit of background on the reasons for the original provisions and a sense of what came up as changes and expansions and greater program coverage came in. And of course I'm going to begin mentioning more recent things that you know more about than I do, like what I call the CDR fiasco. And I guess you might not take offense if it is labeled a fiasco, because I'm sure you felt that way when you were living through it.

From the time the disability freeze which was passed in 1954 up until the present, there was a long, long period in which the administrative structure was simply worked out by cooperative agreement with the states: e.g., the role of the district office, how the claimant was handled, where the applications were taken and how much medical evidence was requested in the first instance and how much was to be done with purchased consultative examinations, and so on. There was a long time when there were very few legislative changes made in the causative area of administration until we got to, I think, the '84 legislation which redefined the SSA/State contractual relationships.

From 1954 on we made a sincere effort to carry out the Congressional intent to satisfy both the people in Congress and others as to the formal relationship that should exist between the SSA and State units. We did not want to undermine the legislative compromises that had been made in 1954 and 1956.

There was very little in the growth of the administrative relationships that didn't come through negotiation with the state directors and through ad hoc cooperative working relationships between the states, the Regional Offices and the Central Office as to who was to do what in order to get a final product.

There were 14 pieces of legislation in the period from the Eisenhower administration through Kennedy, Johnson, Nixon, Ford, Carter, Reagan and up until the beginning of the Bush administration. And they were all significant in that they made many changes-- mostly program expansions-- and certainly some many modifications in the substantive provisions that had to do with the way in which the benefits had to be handled administratively.

I can't touch on many of those, but I want to take a few crucial areas and give you a little bit of background as to where we came from and how we got there. I think that they will be instructive to all of us and especially you folks who are still very actively going to be playing roles from here on out through

the rest of this century. We are coming up against a stone wall on the status of the disability trust fund, probably before the end of this decade. It certainly means there is going to be significant legislation in the coming years involving the effort to contain costs and make sure that disability benefits are going to the right people in the right amounts, and not in amounts that are considered to put excessive strains on future resources. There is going to have to be a reallocation of basic payroll taxes that go into the program. And I won't get any further into that, because that's going to be in Gil Fisher's domain this afternoon.

Role of Rehabilitation

One of the areas that also is going to take on real significance as time goes on is the role and the reality of rehabilitation in both of the disability programs, but especially in the SSI disability program. Maybe also in the Social Security DI program.

An underlying theme that was in the original compromise in 1954 (the freeze) and certainly in 1956 (cash benefits at age 50) was the idea that there would be realistic prospects for vocational rehabilitation of disabled individuals.

Realistic meant both in terms of governmental support of service programs and in terms of the true possibilities of physical restoration and training and placement in the labor market of people who were or became seriously disabled. And that was an underlying rationale and compromise that made the program acceptable in the first instance.

We were to enter into contracts with state agencies. The law simply said "state agencies" because there were one or two very powerful state welfare directors who hoped to-- and did-- get the designation for their welfare department to administer the program. And there was worker's compensation in New York which was very strong and wanted to be in the picture, too. But, by and large, it was agreed that it was going to be the state vocational rehabilitation agencies with whom we would work, and they would have two functions: assisting in the determination of disability and giving VR services.

But at that time a lot of rhetoric and theory was that their real function would be to catch these cases before they went on the rolls and became well embedded in the cash benefit structure. So every individual was to have a chance to be considered for and get rehabilitation. That was the theory.

At that time, however, the rehabilitation programs were embryonic and had scarcely been set in place. Yet there was a very, very strong motivation in the Eisenhower administration to foster federal/state rehabilitation services. And the director of the rehabilitation agency at that time was the legendary Mary

Switzer who was the god-mother of rehabilitation. She was very powerful in the Eisenhower administration and powerful in her dealings with Social security.

Now, Ms. Switzer's idea was that while the Social Security District Office's might identify and take an initial application from a person who was applying for disability benefits, the very first thing that was to be done with that case was to turn it over to the state rehabilitation agencies. Then, a rehabilitation counselor would go to work and consider the case to determine whether or not the client was likely to profit from rehabilitation services.

Well, this was unrealistic in a number of ways. First of all the programs had hardly started. Relative to size of population, there wasn't much of a track record in the way of massive amounts of services. And where there were services, they were primarily for persons who were physically handicapped, needed prosthesis, needed some training to go into sheltered work or something like that. The early VR programs certainly were never funded for, or oriented towards, considering rehabilitation of a population which was age 50 and over.

As far as SSA could see, most of the people who were applying for disability benefits by definition had a long work history in the labor market.. 'And -they were worn out. They were elderly.

When Congress had started to work on the freeze we said, "Well, you know, there will be little satisfaction in making this just prospective. There are people who started working under Social Security in 1937 and by 1942; they would have met the insured status requirements that we are now writing into the law. And they have lost their rights to retirement and survivor benefits. And if you don't go back and pick them up you've left a tremendous gap in the promise that was made to the American people when they were brought under the Social Security Act." So, the freeze was made retroactive.

Soon we found that estimates were that there could be a half a million or a million people for whom one could probably establish a relationship between the time of their termination of employment and the onset of a disability. They would be entitled, at least, to a prompt freeze to protect their future benefits. And, then, two years later when the age 50 benefits came in, time became even more of the essence, because then if they were over 50 they might be able to establish the fact that they were immediately entitled to full scale disability benefits. We couldn't waste much time pondering the outcome of such cases. People wanted answers.

So, I had a half a year's battle with Mary Switzer in the implementation period

about who was going to get those applications first. We were adamant in SSA that we had to move them along and process them before they were considered for rehabilitation. I understood that we ought to get appropriate cases focused on rehabilitation as soon as possible. But I said: "Mary, there are a half a million people out there, many, many of them who are way over 50 and many of them have not worked for years and many have been disabled for long periods of time.

"You've got VR programs in many places that only have a half dozen or a dozen counselors-- even in vast metropolitan areas. And we have SSA District Offices out there all over the country with tens and hundreds and thousands of people who are immersed in doing nothing but working with these kind of people, taking their applications, asking them for their preliminary medical evidence, etc. For a lot of these people, the cases are cut and dry. Don't cause us to fail by creating rehabilitation bottle-necks."

Finally, working with the state rehabilitation council directors we worked out, despite the Washington point of view, a realistic schedule of what kind of cases the States thought they could help and would really want to look at. And we gave them and our District Offices the initial opportunity to work out-- by age, by physical condition, by various other characteristics almost state by state-- the screening criteria for referring people to rehabilitation. And it turned out that the payoff was minuscule.

And over a period of years until we got into more recent times and until we got into the 1619 SSI motivated provisions, we struggled with this idea of making it possible for the rehabilitation agencies to give services to the disabled.

There was a whole series of provisions starting in about 1956 in which federal money-- Social Security money-- was made available to the state agencies for rehabilitation services. First in advance, and then when the actual rehabilitations were coming out of the pipeline. Successful outcomes in referred cases were so few that later on Congress changed the law to allow trust fund reimbursement only for cases that were actually rehabilitated. And that simply aggravated the problem for the rehabilitation agencies because the states then had to put their money out in advance and risk the possibility that there wouldn't be successful rehabilitation if we measured by the criteria of a termination from the benefit rolls. That was the rationale first used to justify trust fund expenditures for VR services.

So it was on again, off again on rehabilitation, per se. It never was a very realistic idea because you were dealing mostly with provisions that were essentially for people who had long established experience in the labor market

and who (even if they could be remotivated or retrained) were frequently subject to the vagaries of the employment situation locally. If they were hired again, they would be the last to be hired and the first to be fired. People dreaded that prospect.

So, the rehabilitation conundrum still persists. With the coming of Medicare and SSI, and then the 1619 provisions, there has been a lot more attention to SGA and the trial work period and the circumstances under which an individual's rights to disability payments can be preserved as he or she goes on or off the program or has to come back again later on. And we haven't heard the end of this. You folks-- you and the people who study the future of disability programs-- are going to be faced with the question of realistic relationships between services and benefits in an administrative structure and a program structure where benefits probably are not ideally suited to motivate people to try rehabilitation.

Offset for Other Disability Benefits

I want to say just a word or two about workers' compensation offsets and other federal benefits because there was (and still is) a lot of concern about duplication of coverage and benefits under various programs.

Going back to the story Alvin was telling you about the touch-and-go, almost-tied-but-just-one-vote-enactment of the disability benefits for people over age 50 in 1956, we planned all along that there had to be an offset for workers' compensation and for veterans' pensions. Not for compensation for service-connected disability, but for veterans' pensions, to both prevent the duplication of benefits and to get the votes. I mean, it was clear to the Advisory Council and to the Ways and Means Committee and the Senate Finance Committee. All said, "No way are we going to put these benefits on top of the other governmental benefits for the same disability without considering their relationship."

And so there was written into the provisions that Senator George was going to take to the floor a benefit offset for those getting workers' compensation and veterans' pensions. And the veterans' lobby of course was a very, very powerful lobby and always has been. The veterans' head lobbyist in Washington came to the committees and to Wilbur Cohen who was spearheading the strategy and said, "We are going to insist on the deletion of the offset for veterans' benefits." And Wilbur pleaded with him. He said, "Look, it's going to be touch and go in any case. Now, if the veterans raise any questions about this at all it won't go through." And the chief veterans' lobbyist -- I was in the room as he looked across at us -- said, "All right, we will keep quiet. We will let it go through this year, but next year we will

amend the hell out of it. " And next year they did. The offset for veterans' benefits was deleted, and the year following the offset for workers' compensation was modified.

And from then on all the way through there is a whole history in the definition of disability, in the insured status requirements, in the definition of dependents covered, in the vocational rehabilitation services, in the offset, in every provision there is a whole history of modification and gradual liberalization which has brought us now to the point where the program is very costly.

Litigation and the Role of the Courts

Another point: court cases. Do I need to tell you about court cases? You who are so familiar with the court cases that are coming out of recent programs, *Zebley* and others, may not realize the evolution there has been in both the appeals process and the litigation process in the last 30 or 40 years. I went to law school and became a member of the Maryland bar back in the late 30's, and I never knew what a class action suit was! We put disability benefits (and Medicare, too) into effect before we had the first real impact of class action suits in SSI.

Well, the courts as I said earlier had gotten into the disability picture way back before Social Security, with U.S. government life insurance, And the Administrative Procedures Act, which applies to Social Security but does not apply to veterans' affairs, leaves the Veterans' Administration with its own, separate veterans' appeal board. But SSA inherited a structure that encourages litigation.

And with the advent of SSI and the strong activity of the advocacy groups now, we are in a situation where, I guess I have to admit, those of us who wrote the original provisions were wrong when we didn't give much credence to what the insurance people said. The insurance people had said, "The courts are going to kill you. This is going to go from one stage to another. You will never be able to stop it."

Admittedly, it depends on how you feel about the essential nature of the benefit and whether you believe there are very many people getting it now who aren't really disabled or aren't really deserving. Whether you think we have been "killed" or not, most of the time the Congress didn't seem to think so. As a matter of fact the Congress was sometimes ahead of the courts in liberalizations, and only in a few instances tried to reverse the liberalizations that came about from court decisions.

True, the Congress did try on a couple of occasions to clarify and tighten up

the definition of disability. And as you may know, back in the Johnson, Nixon and Carter years there were administration attempts to reel in the definition or reemphasize the fact that this was a definition that was not to consider inability to work as a function of local employment opportunities.

Finally we got to the point in the Carter administration where the costs were going far beyond the actuarial expectations and there was a lot of concern (especially with Fred Arner who was the staff person in the Senate Finance Committee, and with some members of the Ways and Means Committee in the House) that the program was getting out of hand.

And a whole set of provisions was put into effect, including the modifications of the state agency relationship from agreements to contracts. In theory, that would make it easier to issue regulations that the states would have to follow.

I'm not going to pursue these legislative remedies, except to point out one thing that was innocently put in there. There was a little provision in there for periodic review of every disability once every three years. And the idea of the people who drafted that was, "Well, we will go at that gradually. We will go at it systematically. "

Then the administration changed. The Reagan administration came in and, I don't want to make this sound too political and I don't want it to sound as if that was the only factor in the picture, but the people over at OMB were scratching around for new ideas to balance the budget. There was a big deficit.

The budget was out of hand. The long range projections for the Social Security program were questioned. Does any of that sound familiar?

(NOTE: Laughter.)

MR. HESS: OMB got the idea that one of the things that could be done was to clear all the people off the disability benefit rolls who shouldn't be on there. Now, they were helped by two pieces of evidence. There had been some internal quality reviews in Social Security and there was a GAO report which resulted in estimates that maybe 20 or 30 percent of the people who were on the rolls shouldn't be on the rolls and that hundreds of millions of dollars could be saved if you paid attention to doing your Continuing Disability Reviews more rigorously.

And of course we had a new commissioner for the new administration who wanted to help balance the budget. So the time table was radically stepped up

for these reviews. And it was stepped up under circumstances where there had never been put into law the kinds of safeguards that made sure that people who were going to be cut off the rolls would have timely notice and timely opportunity to present additional evidence and get to appeal without having an interruption of benefits.

Now, we didn't have that in the law because we had had administrative policies which we couldn't always be sure were carried out to the nth degree in all places; but it was policy that people who were going to get CDR's were supposed to have notice. And it also had been policy that where there was a question about the possible deterioration or improvement of the physical or mental condition, termination of benefits was not to be made where an improvement to the point of "recovery" of work capacity could not be shown.

One of the other things, of course, that had happened in the meantime was the SSI enactment, and there was finally a realization that we were getting a lot more younger workers (under both programs, often with concurrent entitlement) who were mentally disabled.

Now, social progress in this country had emptied the old mental institutions in the 1930's and '40's and put a lot more stress on the need for an individual, if he was to survive, either to cope with his deinstitutionalization or to prove that he was mentally disabled to get services or to get cash benefits. And the medical standards had originally been tough. They were not in keeping with the psychiatric and social developments that had taken place over time. So you in the States not only got all the CDR's precipitously dumped on you, but you got them under circumstances -- and you have to tell me if I'm wrong -- where I believe the medical listings that you had and the general climate of the new administration was not terribly sympathetic to people who were ambulatory and appeared by the old listings to be able to take care of themselves. So the standards were going to have to be reviewed and updated.

Well, I hardly need to describe to you the situation. All hell broke loose; you know better than I do what happened in those years after the signals were switched by OMB and the time table for CDR's was stepped up. Under circumstances in which the cases were rushed to judgement, a lot of people got notices, and a lot of people got terminations, and a lot of people felt threatened with the possibility of loss. These conditions were politically and socially unacceptable,

Every Senator and every Member of Congress now has staff who serve as Social Security expeditors on his Staff in Washington and cities and counties of the nation. They heard from their constituents. And the advocacy groups got going, too. And after terrible political flak, an administrative halt was called,

and then a series of Congressional enactments were passed which said in effect that you've got to pay a lot more attention to the circumstances under which a termination takes place: i.e., notice, opportunity for hearing, new standards, a clear showing of recovery, et cetera, et cetera. And a terrific backlog ensued.

I guess the only reason I'm even touching on this-- because I'm not telling you anything you don't know-- is to point out that the history of the SSI and Disability programs has been one of continual crisis, continual expansions that were not planned for, or circumstances that were unrealistically assumed would not happen.

So, I can't predict whether you are going to have new and unanticipated loads, or similar consequence in the future. I doubt it. But you are going to continue to have pressures for productivity, because available resources will not adequately take into account the ideal way of handling workloads that do not receive primary political attention, namely rehabilitation, trial work, representative pay, i.e., outreach, and so on. Until and unless somebody convinces the President, OMB and the Congress that, just as with IRS, for every enforcer you put on the payroll, for every facilitator you put on the payroll, you save program money. The theory is always to save administrative.. money, to save ceilings. Insufficient attention is given to saving program money by what goes by the board in some of these areas. I think that's not likely to change greatly in this decade. The crunch continues, as we become more and more sensitive to the problems that are down the road in fully funding Disability and SSI.

Now, we are getting close to the lunch hour. There are a few other things that I could say, but it might not be fair to you and it would be a disappointment to me if I didn't allow a few minutes for you people to speak up. And if it just calls for a response on my part-- or on Alvin's part -- we will be glad to do that.

, MR. VANDIVER: One of the things that is interesting in listening to the developments of the program in the early days was the kind of stability of the involvement of certain key staff people. In other words your involvement and Mr. David's involvement.

MR. HESS: We were civil servants.

MR. VANDIVER: It appears that people in Social Security-- at levels where they can actually write, create, and influence the policy and procedures are now more often politically appointed-- have moved down through the years and that has influenced the directions the programs have taken and maybe the frequency with which we have had changes. Would you comment on the

effect of that long term employment or that stability, and where the program got to in early days compared to what we might to see in the future.

Agency Leadership

MR. HESS: Well, I don't think I need to say much except that as Alvin indicated people like Bob Ball-- and before him Arthur Altmeyer who was a presidential appointee and Chairman of the Social Security Board for 15, almost 20 years-- were essentially career people. I worked in the field for five years before I went into the central office and I didn't get down to Alvin's Program Analysis Division until after a couple of years in management. Essentially those of us who got into planning were career people who had been brought up in the social insurance tradition and in dedication of service to people.

And that's not to imply that those who have come later are not dedicated to service to people. I think they may not have a strong conviction about the role of social insurance. And to some extent rightly so, because I don't think anything like that has to be locked into concrete. Social insurance never did encompass all the needs of a total population. For the most part that's now up to SSI, leaving aside the dual entitlement issue. There are a lot of people under SSI who deserve and need social support. And neither the state welfare programs nor Social Security proper cover that.

And incidentally, I didn't cover at all the one big thing that happened to you State people when the federal categories were federalized and we got SSI. I said I wasn't going to talk any longer, but I just have to tell you one quick thing. Under the new SSI law, people who were on State APTD were to be grandfathered in. You and we weren't going to have to look at all those cases again and redo them. Their disability was, in effect, stipulated.

And one of the things that happened was that someone in the new HEW hierarchy ran across the fact that a few states were taking people off AFDC (Aid to Families with Dependent Children) and putting them on APTD, because they could qualify there and they would be grandfathered into the federal program.

After SSI enactment, Congress revised SSI to cure technicalities. And the administration got the Congress to put in a requirement that wiped out that grandfather clause. That didn't pass until about a month before we were due to send out checks. We were already getting Treasury ready to write the checks when the whole disability, APTD transfer was pulled out from under us. And those cases all had to be redetermined by you. We paid those cases in the meantime, but that was another CDR load that nobody had expected to

get. You've got a half a million cases there overnight that had to be re-reviewed.

Coming back to your question, the administrative history of social programs is inseparable from the history of governmental developments generally. And as the federal civil service was sorted out, you got the executive service and more political appointees.

I do think the implications of what you say are government wide. Increasingly you have had in all branches of government the appointment to key posts of people who don't intend to stay there. They aren't career people. They are, with apologies to academics, frequently people who have made their reputation in academia or in state and local politics or in business or otherwise. They come and go.

MR. BUNKER: Would you comment on both the intra-administrative appeals system and the judicial review system and tell us did it turn-out as you thought it was going to turn out? Were there any other options that you discussed that were discarded?

MR. HESS: We have to break for lunch shortly -- but I'll try to give you a little bit of the background. And I think Gil can address the issue this afternoon in terms of its current relevance, because he is now working very deeply with this whole issue of appeals.

Appeals Structure

The appeals structure goes back to the time when Congress passed legislation called the Administrative Procedures Act. That set up the system of ALJ's, administrative law judges. For many years the workload of administrative law judges in all agencies were primarily to assure the right to a full administrative appeal before you go to the courts, in highly technical, substantive provisions like transportation, or communications, or labor relations, in which there was a lot at stake besides the rights of one individual.

But it was unclear whether or not Social Security came under the Administrative Procedures Act, because there was not a specific reference in the Social Security law to that effect. However, it was decided early on by people very high in government that SSA was not exempt. Although disabled veterans did not have an appeal beyond a special veteran's appeal board, Social Security was covered differently and got enmeshed in the formalities of having to deal with an independent group of administrative law judges who are relatively free of agency guidance.

And when disability got into the courts the judges were very much interested in two things. They were interested in due process and they were interested in substantial evidence. Substantial evidence must be found to have existed at the administrative hearings level, because theoretically the courts were not to go de novo into the issues of each individual case. They were supposed to determine whether or not the Cabinet Secretary of the department, who in this case was represented by the administrative law judge, had given due process and whether the file and the decision rested on substantial evidence.

But for many reason the courts wandered off into the question of who is disabled and started to consider the issues in an individual case de novo.

Partly because, as I said, they had a history of getting into this in U.S. government life insurance before the Administrative Procedures Act and there were Federal cases on the books where courts had interpreted the lingo of permanent and total disability.

Medical Listings

Someone had asked me at recess about the idea of the medical listings. I must say this before we end this session. The idea of the listings came from our Social Security work with VA and, mostly, with railroad retirement, neither of whom had listings, per se. But we recognized patterns in their adjudication, indicating there would be a vast majority of our cases that might be pretty cut and dried on the medical evidence alone. So you didn't have to go into vocational issues. And we wanted to find a way to get people through the listings and get them on. The listings were not intended administratively to close the case and foreclose the consideration of capacity to work and substantial activity of one kind or another. The listings were a screen to get people in who had clear cut disabilities.

And therefore we didn't want to give those listings out to the public generally. For years Bob Ball and I were considered to be pretty reactionary and unsocial bureaucrats because we told the state agencies these listings are not to be made public because they are the key to the bank. For then doctors and litigators and others would know what the listings were, and it would be easy to write up a medical report that puts a person on the rolls. I don't mean it's a fraudulent medical report, simply that is slanted in terms of the right words highlighting those manifestations that are qualifying.

Finally because of the requirements of the Administrative Procedures Act and Freedom of Information and all the other things that came along, we made the listings public. And of course they became much more refined. They weren't the meat ax kind of things that they were in the beginning.

But to answer your question we did not foresee that the opportunity to go to hearing and to court was going to develop in the manner in which it did. We provided for a reconsideration which we hoped would pick up most of the cases that were inadequately determined at the beginning level.

And let me say just in two or three sentences, the reversals on reconsideration and the reversals at the hearing of appeals don't necessarily mean that the initial file was not properly handled or that the earliest decision if subsequently reversed, was erroneous. This is due to something that SSA did not do-- we did not close the case off at the end of a reconsideration. The individual can come in with de novo evidence to be considered. These manifestations of disability do sometimes change over time. The person who is, as we say, "determined not to be disabled" may get worse.

And concerning this whole issue of the relationship of reconsideration and medical evidence, we provided for consultative examinations. Although the AMA had frowned very much on the idea that there would be government paid doctors who would get into this picture, we told the state rehabilitation agencies, "Well, you have contracts with doctors all the time for consideration of the medical aspects of rehabilitation; i.e., for assessment of severity of disabilities. So, use your available medical expertise." We did say it had to be medical expertise. "But you use medical expertise! That's under your control. "

And the other big problem was the labor market issue. It is true that the labor market does make a big difference because every time employment conditions have been bad the case load has gone up. And that doesn't mean that people who clearly can work and have just become unemployed are taking this route. It's people who have been working a long time and are just hanging on. Physical conditions in some cases don't create problems of current employment until they lose their old jobs. But then try to get back into the labor market under changed conditions.

Now, we are getting into the lunch hour and I unfortunately must end the discussion.

MR. SHERMAN: We thank you very much, Art and Alvin. It's been a very enlightening morning.